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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/272,190	03/18/99	WILSON	J PA-92

PM82/0925  
MEREK AND VOORHEES  
643-B SOUTH WASHINGTON STREET  
ALEXANDRIA VA 22314

EXAMINER

MARKOVICH, K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/25/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.  
**09/272,190**

Applicant(s)  
**Jack H. Wilson Sr.**

Examiner  
**Kristine Markovich**

Group Art Unit  
**3671**



☒ Responsive to communication(s) filed on Mar 18, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-19 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-19 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3671

In response to applicant's telephone inquiry of September 20, 2000 regarding the last Office action, the following corrective action is taken.

The period for reply of 1 MONTH is restarted to begin with the mailing date of this letter, as per MPEP 710.06.

A complete copy of the last Office action is enclosed.

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second layer of rock chips, discussed in the specification from page 5, line 21, to page 6, line 4, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7, 10, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, line 3, claims "rock chips" while there is a prior mention of the phrase. Each distinct limitation is required to have an exact nomenclature and subsequent reference to the limitation should be preceded by "said" or "the". The lack of clarity renders the claimed subject matter indefinite.

Art Unit: 3671

Claim 10, line 1, should read "The method of resurfacing roads..."

Claim 14, line 3 does not provide proper antecedent basis for the limitation "the wheel lanes".

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayden (US Patent 1,955,421) in view of Reed et al. (US Patent 5,079,095), and further in view of Fekete et al. (5,494,741).

Hayden discloses the claimed device except for the rock chips in the water impervious layers. Reed et al. discloses that it is known in the art to provide rock chips (column 2, lines 37-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete structure of Hayden with the rock chips of Reed et al., in order to reduce hazardous road surface conditions.

Regarding the limitation that the concrete be specifically polymer modified concrete, Fekete et al. teaches that polymer concrete compositions are commonly used in pot-hole and bridge deck surfaces such that it can be prepared at an off-site location and trucked to the location without substantial leakage (column 4, lines 17-38).

Art Unit: 3671

Regarding claims 2 and 4, it would have been an obvious matter of design choice to modify Hayden to have 1/16th to 1/8th inch concrete thickness, since applicant has not disclosed that having the concrete at this specific depth solves any stated problem or is for any particular purpose and it appears that the road would withstand wear with the concrete at any depth.

Regarding claims 3 and 5, although Hayden does not specifically state that the surface material (i.e. rock chip) is placed into the concrete by blowing, it would have been obvious to one of ordinary skill to use this procedure to accomplish embedding the rock chips, since it is well known in the art that the rock chips need to be firmly adhered to the concrete in order to provide the desired surface properties.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cranford (US Patent 210,101) in view of Barton (US Patent 3,775,018), and further in view of Fekete et al.

Cranford discloses the claimed device except for anti-ponding lines. Barton discloses that it is known in the art to provide anti-ponding lines (column 1, lines 31-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pavement of Cranford with the anti-ponding lines of Barton, in order to promote drainage and increase the frictional properties of the road surface.

Regarding the limitation that the concrete be specifically polymer modified concrete, Fekete et al. teaches that polymer concrete compositions are commonly used in pot-hole and bridge deck surfaces such that it can be prepared at an off-site location and trucked to the location without substantial leakage (column 4, lines 17-38).

Art Unit: 3671

7. Claims 12, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayden in view of Jones (US Patent 5,700,385), and further in view of Fekete et al.

Hayden discloses the claimed device except for electrical heating elements. Jones discloses that it is known in the art to provide electrical heating elements (column 1, lines 14-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete structure of Hayden with the electrical heating elements of Jones, in order to prevent the accumulation of snow and ice on driving surfaces.

Regarding the limitation that the concrete be specifically polymer modified concrete, Fekete et al. teaches that polymer concrete compositions are commonly used in pot-hole and bridge deck surfaces such that it can be prepared at an off-site location and trucked to the location without substantial leakage (column 4, lines 17-38).

Regarding claims 16 and 17, it would have been an obvious extension of the teachings of Hayden to apply the first layer of concrete to cover the wheel lanes of the road surface in order to reinforce the area of the road that receives the most wear from traffic.

Regarding claims 18 and 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to connect an electrical heating element to a power source such as a battery or photovoltaic energy source in order to provide power to the element and maintain the elements in working condition.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayden in view of Jones and Fekete et al. as applied to claim 12 above, and further in view of Reed et al.

The combination of paragraph 7 above discloses the claimed device except for the rock chips in the water impervious layers. Reed et al. discloses that it is known in the art to provide

Art Unit: 3671

rock chips (column 2, lines 37-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete structure of the combination of paragraph 7 above with the rock chips of Reed et al., in order to reduce hazardous road surface conditions.

9. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayden in view of Jones and Fekete et al. as applied to claim 12 above, and further in view of Gemmer (US Patent 4,941,770).

The combination of paragraph 7 above discloses the claimed device except for copper wires in the heating elements. Gemmer discloses that it is known in the art to provide copper wires in heating elements (column 2, line 58- column 3, line 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the concrete structure of the combination of paragraph 7 above with the copper wires of Gemmer, in order to reduce hazardous road surface conditions.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Markovich whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3780. The fax phone number for this Group is (703)305-3597.

Art Unit: 3671

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**



**KMM**

**September 20, 2000**